Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Developing a Unified Intercarrier) CC Docket No 01-92
Compensation Regime)

Comments of Integra Telecom, Inc.

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Introduction and Summary

Integra Telecom offers a full range of telecommunications services in 5 states through its facilities-based CLEC and rural ILEC subsidiaries. The Commission has stated that among its most important goals in this proceeding is to maintain universal service and promote development of facilities-based competition. These goals can best be met by maintaining the elements of the current system that work and correcting those that are the most problematic. Abandoning the current compensation structure in its entirety and replacing it with an unproven system is a radical solution unlikely to achieve the Commission's goals. Just as the telecom industry has changed and evolved over recent years, and will continue to in coming years, so should the rules of intercarrier compensation. The Commission should make repairs to the current regime, realizing that further changes will be necessary to accommodate future developments that cannot now be foreseen. It is unlikely that a set of rules, especially ones that radically change the relationships among interconnected carriers, can be put in place, "once and for all". Integra urges the Commission to take deliberate steps towards reform by taking the following actions:

- Reject proposals that call for radical restructuring of existing compensation and interconnection relationships among carriers such as mandated bill and keep, and redefinition of points of interconnection.
- Unify access and reciprocal compensation rates at TELRIC based levels on a company-by-company basis.
- Require ILECs to make tandem transit services available at regulated rates until viable options exist for indirect interconnection.
- Reject calls for SLC pricing flexibility that would allow local rate restructuring to be an unintended result of this proceeding.
- Allow Rural ILECs to recover any net reductions in intercarrier compensation from the Universal Service Fund or other recovery mechanism.
- Establish wholesale "truth in billing" regulations and guidelines for their enforcement, to reduce the occurrence of un-billable "phantom traffic."

These changes are excellent steps in the right direction of focusing on those parts of inter-carrier compensation that are broken, without making radical changes with unintended consequences.

I. Intercarrier compensation and interconnection rules should not be abandoned and re-written from scratch.

The most vexing problems under current rules arise not from the existence of intercarrier compensation, but from inconsistency of pricing between jurisdictions and technologies. Some of these, including the still unresolved question of compensation for calls terminated to ISPs, are the direct result of Commission action or inaction, and can be resolved by the Commission within the current framework.

The ICF proposal calls for complete elimination of originating and terminating charges and radical revision of interconnection rules to achieve this goal:

> "the ICF Plan addresses the terminating monopoly problem and the current lack of an effective market-based check on originating access rates without requiring regulators perpetually to supervise origination and termination rates..."[1]

At the same time, ICF points to rural LECs charging access rates higher than the national average as the cause of reduced options and higher rates for rural long distance customers, resulting in migration to wireless and VOIP alternatives. But higher prices resulting in increased customer migration to wireless and VOIP alternatives is the best possible proof that market-based checks on originating access rates are effective. The radical action advocated by the ICF proposal is not necessary and is bad policy.

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[1] ICF Comments at 29.

Instead of following the ICF proposal, the Commission should focus on rates for each company at levels that approximate cost. This change will yield the greatest benefits. Unifying rates across carriers is of secondary importance, and addresses a problem for which the market already has a response.

II. Bill and keep should not be mandated for intercarrier compensation.

Most of the problems with the current regime can be addressed by a unified rate, not just a zero rate. Integra agrees with Verizon's assessment of bill and keep.

> "In any event, virtually all of the benefits claimed to flow from a bill-and-keep regime actually trace to the establishment of a more uniform rate structure for various types of traffic (as opposed to a one-size-fits-all solution for all carriers or all networks."[2]

Numerous commentators agree that unification of access and reciprocal compensation rates will significantly reduce arbitrage opportunities and incentives for carriers to disguise traffic or select technologies based on their potential for avoiding intercarrier charges. Frequently cited examples are traffic terminating to ISPs, VOIP, VNXX, and asymmetric local calling areas between LEC and CMRS operators. In each case, the problem can be resolved by establishing a unified cost-based rate. However, bill and keep should be an option available to carriers upon mutual consent.

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[2] Verizon Comments at 4.

III. A zero rate for origination and termination will invite a new set of problems.

One argument given in support of bill and keep is that the current access charge regime allows the terminating carrier to impose costs on the originating carrier, and decreases incentives to minimize network costs.[3] This may be true to the extent that access charges exceed forward looking costs. However, a bill and keep approach would simply create a similar problem in the opposite direction. IXCs, offered use of originating and terminating facilities free of charge, would have no incentive to limit their use, and would almost certainly find ways to take advantage of them in new service offerings. Costs could still be exported, just by a different group of carriers. The solution lies in bringing intercarrier compensation more in line with long run incremental costs, which will send efficient economic signals to carriers, allowing them to sensibly decide whether to buy or self-provide the services they need.

The growth of dial-up Internet access in the early 90's provides an example of how connecting carriers might impose additional costs on LECs. As Internet usage grew, average durations of local calls increased dramatically compared to the relatively shorter holding times for which LEC facilities had been engineered. In some cases, peak switch usage during evening hours exceeded that of traditional daytime busy hours, requiring switch augments. In that case, LECs at least had a retail relationship with the end users, and thus

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[3] ICF Comments at 14.

theoretically a way to recover costs. Under a bill and keep regime, if IXCs were to develop service offerings which dramatically extended average call durations, LECs could be encumbered with significant new costs, with no opportunity to recover them. Elimination of originating and terminating access would almost certainly promote the development of services that would utilize LEC facilities in groundbreaking ways.

IV. Uniform rates should be cost based.

Call origination and termination is not cost free. The argument that LECs incur no additional costs to originate and terminate traffic is based largely on the fallacy that switching costs are not traffic sensitive. This fallacy is refuted in detail by Bellsouth and TWTC.[4] Even if imperfect, rates that reasonably approximate costs send much better market signals than rates that ignore costs altogether. Integra supports the use of state determined TELRIC based rates. CBICC, TWTC, Pac-West and others point out that TELRIC has survived and been refined by years of legal challenges, and that TELRIC proceedings have been conducted in all states. Carriers for whom TELRIC rates have not been established should have the option of adopting the existing rates of the largest carrier in each state, or making an individual showing to justify different rates.

V. Zero rates for origination and termination would create unnecessarily large demands on universal service programs.

[4] Comments of Time Warner Telecom, et al., at 12-16; BellSouth Comments at 22-26.

Funding for universal support programs is an important concern in this proceeding. ICF proposes the elimination of end office compensation, along with a major expansion of the federal USF. The Commission should not take any action that unnecessarily increases USF funding requirements. Although cost based rates will be considerably lower than current access rates, they would generate revenue that some companies would otherwise have to recover through USF mechanisms.

VI. Rural ILECs must be allowed to recover any lost intercarrier compensation from the USF or other replacement mechanism.

Rural ILECs bear provider of last resort responsibilities in some of the nation's least densely populated areas. Many rural ILECs bear unusual costs not only because their service territories are costly to serve, but because their small customer bases do not afford them the economies of scale that larger carriers enjoy. Rural ILECs must be allowed to recover net reductions in intercarrier compensation from the Universal Service Fund or other replacement mechanisms. This will necessarily increase funding requirements for the USF. Basing USF funding on a surcharge per telephone number or equivalent connection is a reasonable way to expand the contribution base.

VII. Bill and keep is not competitively neutral.

The Commission should carefully consider the motives of the proponents of bill and keep. There are two primary scenarios in which an intermediate network transports a call between the networks of two end users. The first is the case of a local call which transits the tandem transport facilities of an ILEC on its way between two other local carriers, for example from CLEC to CLEC, or RLEC to CMRS. The local carriers are retailers, having billing relationships with their end-user customers and the intermediate carrier is a wholesaler, having a billing relationship only with the retailer. The second is the case of a long distance call, transported by an IXC. In this case, the intermediate carrier is the retailer, having a billing relationship with the financially responsible end user. The local networks are providers of wholesale services.

Each of the signatories to the ICF proposal is in whole or in part an intermediate carrier, either an IXC or an operator of tandem transport facilities, or both. Curiously, the ICF plan proposes that in the case of long distance service, when the intermediate carrier is the service retailer, no payment should be made to the providers of wholesale services. However, in the case of local interconnection through tandem transit facilities, when the intermediate carrier is a wholesaler, the ICF plan calls for payments from the retailer. This plan is illogical and shows how the ICF plan is a lop-sided and self-serving plan crafted by and for carriers hoping to leverage their ownership of intermediate network assets.

VIII. All carriers are not the same.

As BellSouth correctly points out:

> "an underlying presumption of bill-and-keep is that the marketplace equilibrium is based on fully functional facilities-based network providers exchanging traffic… Unfortunately, the market does not consist of only facilities-based carriers; rather it is replete with specialized market players and non-facilities-based service providers, none of which bill-and-keep is designed to accommodate. For example, some providers focus exclusively on one market segment such as interexchange communications. Other providers offer services across a full range of market segments."[5]

Most carriers are wholesalers of some services, and retailers of others. Some are only retailers, and some exclusively wholesalers. BellSouth gives an excellent example of how bill and keep is not competitively neutral between two competing carriers with different market structures.

> "A reformed intercarrier compensation system has to accommodate the diversity of the market in a way that neither favors nor disfavors a particular competitor. For example, assume that there are three carriers: Carrier A, and interexchange carrier, Carrier B, a full service (local and interexchange carrier) and Carrier C, a local carrier. Assume that a call between end users served by Carrier B and Carrier C is an interexchange call. If Carrier A and carrier B compete in the interexchange market segment, under a bill-and-keep arrangement, both carriers have to bear the cost of interexchange transport, but only Carrier B has to bear the cost of the local network where the call originates. The result is not competitively neutral."[6]

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[5] BellSouth Comments at 9-10.
[6] BellSouth Comments at 10

Such inequitable treatment must not be allowed, but Integra supports the TDS position that : "ILEC equal access obligations should be eliminated if ILECs are denied compensation for originating access."[7]

IX. The Commission should reject the redefinition of interconnection responsibilities contained in the ICF proposal

The interconnection rules in the ICF proposal are anti-competitive. As TDS states:

> "With respect to CLECs, the ICF Plan is again patently discriminatory because of its distinction between "hierarchical" and "non-hierarchical" carriers. The ICF Plan classifies carriers as either hierarchical (with a network structure of tandems subtended by end offices, like traditional BOCs) or non-hierarchical (with a flat network structure connecting all end users to a single hub switch, like many CLECs). Under the ICF Plan, carriers with the same network structure are financially responsible for transport costs only for their originating traffic and are responsible for delivering their originating traffic to the other carrier's Edge. When carriers employing different network structures interconnect (e.g., when a BOC and CLEC interconnect), the ICF Plan assigns responsibility to the non-hierarchical carrier for all transport costs, both originating and terminating, to and from the ILEC's Edge. In other words, when two BOCs interconnect, they share transport costs for exchanging traffic between themselves, but when a CLEC interconnects with a BOC, the CLEC is responsible for all interconnection transport costs. The ICF Plan provides no valid justification for this anti-competitive proposal."[8]

Integra supports TDS's position on this issue.

X. The Commission must ensure that transiting services are available to all connecting carriers on a non-discriminatory basis until viable competitive options exist.

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7 TDS Comments at 22

8 TDS Comments at 30-31.

ILEC tandems are facilities with great anti-competitive potential. The RBOCs are divided on the issue of originating and terminating charges, but they agree regarding their desired treatment of transiting traffic. Qwest, Verizon, BellSouth, and SBC all ask the Commission to determine that transiting services are not common carrier services, and should be provided voluntarily, at market determined rates. This is a bold request by companies that hold near monopolies on tandem switches upon which virtually all other carriers depend for indirect interconnection. The Commission must confirm that transiting services are common carrier services and must continue to be provided at regulated rates. Otherwise, the largest ILECs will have been granted an overwhelmingly powerful anti-competitive weapon against competitors that currently have few if any options for efficient interconnection.

XI. Even the Internet example recognized the anti-competitive potential inherent in control of interconnection facilities.

Several parties advocating market based transiting arrangements point to the Internet as an example of unregulated network interconnection. However, even in the Internet example, it was recognized that control of major points of interconnection had to be protected from competitive abuse. Describing how the National Science Foundation turned the first four Network Access Points over to private operators, the Declaration of Lyman Chapman admits,

> "Under the terms established by the National Science Foundation, a Network Access Point operator was required to provide and operate an interconnection facility on a nondiscriminatory basis, using published pricing and technical operating specifications." [9]

Apparently, the NSF understood that allowing operators of these interconnection facilities unfettered control of terms and pricing would have relegated the Internet to control by a tiny handful of powerful carriers, and would have stifled development of the robust interconnection that we enjoy today.

XII. The Commission should not allow ILECs to recover revenues lost from business lines through disproportionate application of SLC increases on residence customers.

It is likely that whatever changes are made to intercarrier compensation mechanisms, most if not all LECs will experience reductions in access revenues. Increasing SLC caps is often suggested as a way for ILECs to recover these revenues. The Commission should not allow intercarrier compensation reform to be used as a vehicle for ILECs to restructure local rates in circumvention of state commissions. SLC pricing flexibility like that contained in the ICF proposal would allow dominant ILECs to shift recovery from business customers, which are subject to relatively greater competitive pressures, to residential customers, which have fewer competitive options. The Commission should deny the SLC pricing flexibility sought in the comments of ICF, Qwest, Verizon and BellSouth. Local rate restructuring is

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[9] Verizon Comments , Attachment A, Declaration of Lyman Chapin, page 11

not a stated goal of this proceeding, and should not be allowed to become a byproduct of it.

XIII. The Commission should address the issue of phantom traffic.

Even if the Commission were to adopt a bill and keep approach, phantom traffic will remain a problem for LECs during any transition period. Phantom traffic, traffic for which call detail records are inadequate to determine the calling party, the responsible carrier, and/or the switch through which the call originated, is not the result of a defective compensation mechanism, but the result of failure to enforce existing rules. Whether it is the result of unintentional errors or intentional deception, phantom traffic is a costly and preventable phenomenon for many carriers. Integra urges the Commission to take the following actions suggested by TDS:

> (1) adopt "truth-in-billing" guidelines that make it explicitly unlawful to alter, exclude, or strip carrier and call identifying information; (2) implement processes for challenging suspect traffic and penalizing responsible carriers; (3) permit inaccurately labeled traffic to be billed at the highest applicable rate to the carrier delivering the traffic; and (4) authorize the blocking of inaccurately labeled traffic, subject to specific guidelines and timelines for notifying and warning consumers and investigating and resolving disputes.[10]

Conclusion

Integra does not endorse any current proposal in its entirety but sets forth important elements to be included in the final proposal. Integra urges the

[10] TDS Comments at 11-12.

Commission to mix and match the proposals as necessary to fix current problems without making radical changes that create new, unforeseen problems.